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Co., 216 U. S. 449. Another case coming up before the U. S. Supreme Court for decision involved the question as to whether a corporation engaged principally in carrying on a general restaurant business, could be considered as engaged in a trading or mercantile pursuit within the meaning of § 4 of the statute. The court held that it could not. *Nollman* v. *Wentworth Lunch Co.* (1910), 217 U. S. 591. Other recent cases upon the points involved in the preceding cases are: *In re Humphrey,* 177 Fed. 187; *Robertson* v. *Union Potteries Co.,* 177 Fed. 279; *Bollinger* v. *Central Nat. Bank,* 177 Fed. 609; *In re Eagle Laundry Co.,* 178 Fed. 308; *U. S. Surety Co.* v. *Iowa Mfg. Co.,* 179 Fed. 55. These are the latest cases decided under § 4 of the Bankrupt Act as amended by § 3 of the Act of February 5, 1903, c. 487, 32 Stat. 797, relating to involuntary bankrupts. The section was amended in June, 1910, extending the application of the Act to all moneyed, business or commercial corporations, excepting municipal, railroad, insurance and banking corporations. This amendment eliminates a question, over which there has been much contrariety of opinion in the lower Federal courts, and which has but recently been settled by the Supreme Court of the United States in the three cases noted above. It is practically a return to § 37 of the Bankruptcy Act of 1867, except that municipal, railroad, insurance and banking corporations are expressly excluded. The Federal Courts held that the Act of 1867 applied to all corporations created for the purpose of carrying on or pursuing any lawful business defined by their charters, and clothed with power for this purpose, for the sake of gain. *Rankin* v. *Florida R. R. Co.,* 20 Fed. Cas. 274; *Alabama R. R. Co.* v. *Jones,* 1 Fed. Cas. 275. Apparently under such a holding all of the corporations in the principal cases above mentioned would have been adjudicated bankrupts. The Act of 1898 narrowed down considerably the class of corporations that might become involuntary bankrupts. The Federal Courts under this act have construed strictly and technically the terms applied to the classes of cases enumerated. *In re Cameron Town Ins. Co.,* 96 Fed. 756; *In re Tontine Surety Co.,* 116 Fed. 401; *In re Guarantee and Trust Co.,* 121 Fed. 73. The new amendment is a return to a more liberal application of involuntary bankruptcy to corporations generally.

BANKRUPTCY—FOLLOWING TRUST FUNDS INTO HANDS OF TRUSTEE IN BANKRUPTCY.—S, who did a private banking business, became insolvent prior to Aug. 15, 1908. Between that date, and Sept. 30, 1908, claimant made a number of deposits in S's bank. On the latter date S. filed a voluntary petition in bankruptcy, claimant having in the bank at the time a balance of $231.11, which was more than covered by the cash on hand. Claimant was ignorant, prior to proving his claim, that S. had accepted claimant's deposits, knowing himself to be insolvent at the time. Claimant bases his claim on the fraudulent receipt of his deposits, and seeks to recover the amount of his balance as a trust fund, in preference to the other creditors. *Held,* that claimant could follow the full amount of his claim into the hands of S's trustee in bankruptcy, as a trust fund, and in preference to other creditors. *In re Stewart* (1910), — D. C., N. D., N. Y. —, 178 Fed. 463.

That trust funds may be followed from the holder, into the hands of the

latter's trustee in Bankruptcy, when capable of identification, is well settled. *In re Taft,* 66 C. C. A. 385; *Erie R. R. Co.* v. *Dial,* 72 C. C. A. 183. There is what some courts call a modern tendency to allow recovery if it can be shown that the general fund in the hands of the creditor's trustee has been augmented by the commingling of trust funds with it, the entire fund then being considered a trust fund. *Massey* v. *Fisher,* 62 Fed. 958. *National Bank* v. *Insurance Co.,* 104 U. S. 54. What appears to be the better doctrine, as applied by the federal courts, is that at least some identification of the property must be shown. *American Can Co.* v. *Williams,* 178 Fed. 420. The court in the latter case however, seems to consider that by showing a conversion into, or commingling with, the general fund, a sufficient identification is established, provided that withdrawals have not reduced the general fund to below the amount of the trust fund.

BILLS AND NOTES—NOTICE BY MAIL—PROOF OF MAILING.—A banker testified that he deposited in the post-office, postage prepaid, and mailed the proper notices of dishonor of certain notes. Upon cross-examination, the witness said: "They were mailed by the clerk." Q. "Did you mail them?" A. "Put them with our mail." Q. "Do you know whether they were put into the office of your own knowledge?" A. "I don't." Q. "You don't know who put the mail or carried the mail to the office on either of those days?" A. "I do not." No evidence was offered to show why the clerk was not called as a witness. *Held,* there was sufficient evidence to justify a finding, in the absence of proof that the notices were not received, that they were duly mailed as required by the Negotiable Instruments Law, §§ 4259-4276, Gen. St. 1902. *Central Nat. Bank* v. *Stoddard* (1910), — Conn. —, 76 Atl. 472.

Proof of notice must be strict. A mere probability is not sufficient. *Martinis* v. *Johnston,* 21 N. J. L. 239. *Schoneman* v. *Fegley,* 14 Pa. St. 376. In the main case, the court said that the fact of mailing may be proved by either direct or circumstantial evidence. It is not necessary that a single witness should swear positively that he deposited the notice in the proper place. But all who had anything to do about the matter of depositing the notice should be called. *Commercial Bank* v. *Strong,* 28 Vt. 316. If the person whose duty it was to deposit letters in the post office is not called or his absence accounted for, compliance with the usual custom (*Bell* v. *Hagerstown Bank,* 7 Gill 216) is not fully proved. *Brailsford* v. *Williams,* 15 Md. 150, 74 Am. Dec. 559. This rule was first announced in *Hetherington* v. *Kemp* (1815), 4 Camp. 193. Where the person who deposited the letters testifies either from recollection or invariable custom, the evidence is sufficient. *People* v. *North River Bank,* 17 N. Y. Supp. 200, 62 Hun 484; *Martin* v. *Smith,* 108 Mich. 278, 66 N. W. 61; *Skilbeck* v. *Garbett,* 7 Q. B. (53 E. C. L.) 844; *Commercial Bank* v. *Strong,* supra. And insufficient, where such person does not testify. *Brailsford* v. *Williams,* supra, *Newport Nat. Bank* v. *Tweed,* 4 Houst. 197. See full discussion in *Goucher* v. *Carthage Novelty Co.,* 116 Mo. App. 99, 91 S. W. 447. In the main case, the testimony leaves the letter in the office. There seems to be an essential link missing in the proof of mailing.